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**Basic Metal and Salvage Co., Inc. and Local 958,
Waste Material Sorters, Trimmers and Hand-
lers Union, AFL-CIO and Mark A. Holder.**
Cases 29-CA-19324 and 29-CA-19597

November 16, 1999

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND
LIEBMAN

On November 8, 1996, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, directing Basic Metal and Salvage Co., Inc., the Respondent, to offer Mark A Holder immediate and full reinstatement, and make him whole for any loss of earnings or other benefits that he may have suffered as a result of the Respondent's discrimination against him in violation of the National Labor Relations Act. On September 23, 1997, the United States Court of Appeals for the Second Circuit entered its judgment enforcing in full the Board's Order.

A controversy having arisen over the amount of backpay due the discriminatee, on August 25, 1999, the Regional Director for Region 29 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order through 1997, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.²

By letter dated September 21, 1999, counsel for the General Counsel advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by September 28, 1999, summary judgment would be sought. The Respondent filed no answer.

On October 6, 1999, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On October 8, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

¹ 322 NLRB 462 (1996).

² The Respondent did submit a statement that it has ceased doing business as of June 30, 1999. This clearly does not purport to be an answer to the compliance specification. We note also that this letter did not reflect service on any of the parties to the case.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment.³ Accordingly, we conclude that the net backpay due the discriminatee for the period set forth in the compliance specification is as set forth therein and we will order payment by the Respondent of the amount to the discriminatee, plus interest accrued on the amount to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Basic Metal and Salvage Co., Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall make whole Mark A. Holder, by paying him \$18,381.15, plus interest accrued to the date of payment and minus tax withholdings required by Federal and state laws.

Dated, Washington, D.C. November 16, 1999

John C. Truesdale, Chairman

Sarah M. Fox, Member

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

³ The compliance specification reserved, and we grant, the Regional Director the right to claim wage increases for the claimant at the same rate as those granted to similarly situated employees during 1995. Further, we note that in the absence of a valid offer of reinstatement, the backpay period has not terminated and that the compliance specification claimed no backpay at this time after the fourth quarter of 1997.